

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

v.

DECISION AND ORDER
24-CR-162-A

DERREL AUSTIN,

Defendant.

On December 17, 2024, Defendant was charged in a four-count indictment with various narcotics and firearms offenses, (Dkt. 23), and the case was referred to Magistrate Judge Jeremiah J. McCarthy for supervision of all pretrial proceedings. A scheduling order was entered which required that Defendant's pretrial motions be filed on or before February 5, 2025. (Dkt. 31).

On January 28, 2025, Defendant filed various timely pretrial motions which sought the following relief: suppression of evidence; dismissal based upon pretrial delay; dismissal of Count 3; Inspection of Grand Jury Minutes; Dismissal of Outrageous Government Conduct; Costs; Release of Brady Materials; Pretrial Notices; Leave to File Additional Motions; and Suppression of Pretrial Statements. (Dkt. 37, 38). On March 11, 2025, Magistrate Judge McCarthy held an evidentiary hearing on Defendant's pretrial (Dkt. 37, 38) motions. (Dkt. 54).

Following that hearing, Defendant, on March 28, 2025, filed the instant untimely pretrial motion seeking to dismiss the Indictment as defective. (Dkt. 58).

After briefing (Dkt. 60, 62, 65) and oral argument (Dkt. 66) on Defendant's motion to dismiss the Indictment as defective (Dkt. 58), Magistrate Judge McCarthy, on April 28, 2025, issued a Report and Recommendation (R&R) which recommended that Defendant's motion be denied. (Dkt. 67).

On May 2, 2025, Defendant filed Objections to the R&R, (Dkt. 68), and the government responded. (Dkt. 71). This Court has determined that oral argument on such motion is unnecessary.

Pursuant to 28 U.S.C. § 636(b)(1), this Court must make a *de novo* determination of those portions of the R&R (Dkt. 67) to which objections have been made. Upon *de novo* review and after reviewing the submissions of the parties, the Court adopts the proposed findings of the R&R (Dkt. 67) and hereby adopts the R&R in its entirety. (Dkt. 67). Accordingly, for the reasons set forth in Magistrate Judge McCarthy's R&R (Dkt. 67), Defendant's motion to dismiss the Indictment as defective (Dkt. 58) is denied in all respects.

The case is referred to Magistrate Judge McCarthy to address Defendant's remaining outstanding pretrial motions. (Dkt. 37, 38).

IT IS SO ORDERED.

s/Richard J. Arcara

HONORABLE RICHARD J. ARCARA
UNITED STATES DISTRICT COURT

Dated: May 21, 2025
Buffalo, New York